IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3771 OF 2005
AND
WRIT PETITION NO. 3749 OF 2005.

The Chairman, Swami Vivekanand Shikshan Sanstha, Kalyan... Petitioners
V/s
Ms.Shobha Shankarrao Satpute (W.P.No.3771/05)
Ms.Kalpana Papat Aher (W.P.No.3749/05)..... ..... Respondents.

Mr.Nayna Thatte i/by Mr.S.M.Oka, Adv. for the petitioners.

Mr.G.S.Godbole, Adv. For respondent No.1.

Mr.M.H.Solkar, AGP for respondent No.2.

Mr.Mandas Limaye, Adv. For respondent Nos. 3 &4.

CORAM: A.P. DESHPANDE, J.
16.6.2007

PC:

Rule.

Rule made returnable forthwith. Taken up for final hearing by consent of parties.

As the question of facts and law involved in these petitions is identical the petitions are heard together and are being disposed of by this common judgment.

2. The petitioner, an educational institution by name Swami Vivekanand Shikshan Sanstha, Kalyan has taken exception to a judgment and order passed by the Presiding Officer, Additional School Tribunal in Appeal No.4/04

dated 28.4.2005. The Tribunal allowed the appeal filed by respondent No.1 and directed the petitioner to reinstate the 1st respondent together with all consequential benefits including back wages and continuity of service from the date of termination till reinstatement. Though the order passed by the School Tribunal is of 20.4.2005 the petitioner has not complied with the said order despite the fact that there is no interim order passed in this writ petition.

3. The respondent No.1 came to be appointed as an Assistant Teacher with effect from 13.6.1999. Right since the date of appointment respondent No.1 was trained graduate teacher eligible for being appointed in the post of Assistant Teacher. It is the case of the respondent No.1 that she was appointed as Assistant Teacher on probation and having successfully completed the probation period, has assumed permanency in view of the provisions of section 5 sub section (2) of the Maharashtra Employees of Private School (Condition of Services) Regulation Act, 1977 (the "Act"). Respondent No.1 was continued in service as her work and behaviour was found to be satisfactory till 25.11.2003 on which date she came to be terminated from service. The order of termination dated 25.11.2003 states that as one division of standard VIII and one division of standard IV has been reduced from June 2003 the respondent No.1 is being terminated from service on account of reduction of establishment owing to reduction in number of classes or divisions. There is no other reason for termination of respondent No.1 from service. The School Tribunal found that as the respondent No.1 was permanent employee working in aided and recognized

school, she is entitled to be absorbed in some other recognized and aided school under Rule 26 of the MEPS Rules and it was impermissible for the petitioner to have terminated her from service. Rule 26 which deals with a situation which emerges in the present writ petition castes an obligation on the management to effect retrenchment only after compliance of provisions of rule 26. The retrenchment under that rule can only be effected after giving three months notice and such a teacher who is rendered excess is entitled to be absorbed by the Education Officer under Rule 26(2)(iii) in some other aided school. Thus the termination of respondent No.1 by the petitioner without complying with the provisions of rule 26 was wholly illegal and thus rightly the termination order passed by the petitioner was quashed and set aside.

4. Now, it is not in dispute that the strength of the teaching staff in the concerned school has further gone down and the Education Officer Mr.Kotwal who is present in the Court has instructed learned Additional Government Pleader Mr.Solkar that the present sanctioned strength of the teaching staff in the school is seven excluding Head Master. The learned Additional Government Pleader Mr.Solkar also places on record a communication dated 15.6.2007 addressed to him by the Education Officer wherein it is categorically stated that on account of reduction in number of divisions the respondent No.1 has been rendered excess from academic sessions 2006-07 (June, 2006). It is also not in dispute that the Education Officer is proposing to absorb respondent No.1 in some other aided and recognized school. Learned counsel Shri Godbole on instructions from respondent No.1 who is

present in the Court submits that the respondent No.1 is ready and willing to have her services absorbed in some other recognized and aided school. It is thus clear that though the order of termination is wholly illegal and unsustainable in law, there is no workload available in the school administered by the petitioner wherein respondent No.1 was working and hence appropriate direction in that regard, of absorption need to be issued. Hence the following order:

ORDER

i) Writ petitions to the extent they challenge the order passed by the Tribunal is concerned, the same are dismissed. Respondent No.1 shall be deemed to have been reinstated in service with effect from 20.4.2005 i.e. date of passing of judgment and order by the Presiding Officer. The petitioner shall pay back wages from the date of termination i.e. 25.11.2003 till the end of academic sessions 2005-06.

ii) The Education Officer shall grant absorption to respondent No.1 in some other recognized and aided school. The Education Officer shall release the salary of petitioner from commencement of academic sessions 2006-07 i.e. June, 2006 and shall continue to draw salary from the parent school so long as respondent No.1 is absorbed in some other school. Rule made absolute in above terms.

Iii) Both the writ petitions accordingly stand disposed of.

16.6.07.